

**SOUTHSIDE COMMUNITY FACILITIES DISTRICT NO. 1
REQUEST FOR BOARD ACTION**

Date: July 25, 2013

SUBJECT: Authorizing Strike-Off of Unpaid Assessments at Auction

SUBMITTING DEPARTMENT: District Manager

PREPARED BY: Larry Tarkowski, District Manager

AGENDA LOCATION: Comments/Communications , Consent , Work/Study ,
New Business , Public Hearing , Second Reading

ATTACHMENTS: a) Resolution No. 22

SUMMARY/BACKGROUND: On March 23, 2006 (after receiving a petition from the required number of property owners), the Town Council approved Resolution No. 1417 declaring its intention to form the Southside Community Facilities District (SCFD) No. 1 in the SR 69 corridor near Prescott Country Club. The purpose was to extend water and sewer lines for commercial purposes in the corridor. After an initial election on June 27, 2006 where the owners approved ad valorem tax bonds to be issued, a decision was made to switch to the concept of an assessment district. Therefore, on October 11, 2007 the SCFD No. 1 Board adopted Resolution No. 1 declaring its intention to fund the improvements through assessments. Also, two development agreements were subsequently approved with adjacent land owners to extend the improvements to those properties in return for their participation in the costs. On January 10, 2008, the Board approved a construction contract based on the low bid of \$1,988,571.50 (well below the engineer's estimate). On February 14, 2008, the Assessment Diagram and Method of Assessment were approved as well as up to \$3,500,000.00 in assessment bonds to cover any amount not paid in cash by property owners during the cash collection process. In the end, only \$3,025,000.00 in bonds had to be issued to complete construction and fund a reserve. After the improvements were completed, a surplus was available which led to adoption of a recapitulated assessment on December 3, 2009 (giving a cash reimbursement to those who had paid up front in cash and a payment reduction to those helping pay off bonds).

Unfortunately, due to the worldwide recession (and reduced values for undeveloped commercial property), in 2010 one of the property owners indicated they would no longer be making their annual assessment payments. They had attempted to sell the parcel in whole or in part, but without success. As a result, a draw of \$33,515.14 became necessary from the \$267,587.50 reserve to make the July 1, 2010 bond payment. Since then, this owner has continued not to make their assessment payment and draws on the reserve have continued. At the same time, the reserve has been slightly depleted as some owners have paid off their assessments and received credits against the reserve. As of July 1, 2013, the total remaining in the reserve was \$13,211.41. This is less than what is expected to be needed to make the January 1, 2014 bond payment if the same property owner continues not to make their assessment payment.

ARS §48-721(B) provides that assessments are a first lien on the property assessed (subject only to general property taxes and prior special assessments). In the event assessment payments are delinquent, the government entity involved may sell the delinquent assessment (and, essentially, the underlying parcel) at an auction held once a year in March. Beginning in March 2011, this large parcel and its assessment have been offered for sale but there has been no purchaser.

Unlike when cities and towns create assessment districts, when CFDs create such districts they are under no obligation to “strike off” such assessments and pay for them when there is no other purchaser at auction. However, there is nothing that prohibits CFDs from voluntarily doing so. Also, cities and towns and CFDs may decide whether to pay off the entire assessment at once or simply pay off the amounts outstanding each year. If they choose to pay just the amount outstanding in the first year, they must continue doing so each year thereafter until the owner begins paying again or the full assessment is paid off. Once the full assessment is paid this way, the owner will have a year in which to redeem the parcel (after paying a progressively higher interest penalty). If redemption doesn’t occur during that period, the city, town or CFD may apply for a superintendent’s deed (after notice). Once it has a deed, it may then sell the property based on whatever process applies (in an effort to get back the money it has spent and, perhaps, make a profit).

Now that the reserve is no longer sufficient to pick up the difference caused by the non-payment of this assessment, staff is proposing that the SCFD No. 1 Board authorize the District Manager to order assessments struck off to the District if there is no other purchaser at auction. Since the amount of these assessments on commercial property can be relatively large, the Manager would also like the option to only pay the amount due in a particular year. Finally, since the next bond payment on January 1, 2014 will need to be made before the next scheduled auction in March 2014, he would like the ability to go back to the March 2013 auction and order that unpaid assessment to be struck off to SCFD No. 1. That means this first payment will be fairly significant since it must include all delinquent amounts and penalties since 2010. However, any year thereafter will only be for the amount unpaid that year.

OPTIONS ANALYSIS: The SCFD No. 1 Board may adopt Resolution No. 22 as written, propose revisions to the Resolution prior to adoption, table the matter for further consideration, OR decline to adopt Resolution No. 22.

ACTION OPTION: Motion to authorize the Chairman (or, in his absence, the Vice Chairman) to sign Resolution No. 22 authorizing the District Manager to order delinquent assessments and property (for which there is no other purchaser at auction) struck off to the District with the option of only making payments due for any particular year, **OR** Motion not to approve Resolution No. 22. **VOTE.**

RECOMMENDATION: Staff recommends authorizing signature of Resolution No. 22.

FISCAL ANALYSIS: On October 11, 2007, the SCFD No. 1 Board approved an IGA with the Town whereby the Town would (a) pay certain SCFD No. 1 expenses in anticipation of SCFD No. 1 selling bonds and reimbursing the expenses from bond

proceeds, (b) provide for on-going operation of SCFD No. 1, and (c) make a contribution towards upsizing the improvements in anticipation of (i) possible future annexation of a portion of the Prescott Country Club, and (ii) connection to nearby commercial properties. In providing for the District's on-going operation, the Town provides the funds SCFD No. 1 will use if assessments are struck off to SCFD No. 1. However, once SCFD No. 1 obtains title to such property and sells it (or otherwise obtains reimbursement for amounts it has paid through negotiations with owners or purchasers), then the Town will be reimbursed for what it has provided to SCFD No. 1. If there is eventually a profit based on sale of property, once the bonds have been paid off (and if SCFD No. 1 is liquidated) any balance of funds will go to the Town.

REVIEWED BY:

Southside CFD No. 1 Treasurer _____

Southside CFD No. 1 Clerk _____

Southside CFD No. 1 Legal Counsel _____

Southside CFD No. 1 Manager _____

BOARD ACTION:

Approved Denied Tabled/Deferred Assigned to _____

